

TAB 3

Review Potential Regulation Revisions

Presented by: Jerry Anderson, APOC Staff

AGENCY CHECKLIST -- "REGULAR" REGULATIONS

DRAFTING

- _____ Discuss project timeline with legislation and regulations section if the project has an effective date deadline or other urgency or is lengthy or complex. Review any timeline proposed under AS 24.08.035. (See Step 2 in Ch. 2.)
- _____ Proposed regulations drafted and reviewed by agency in accordance with law and this manual. (See Step 2 in Ch. 2.)
- _____ Prepare fiscal note, if necessary. (See Ch. 4 and 14.) Appendix F.
- _____ Decide whether to use the Alaska Online Public Notice System to receive comments on the project.
- _____ Draft the public notice of proposed regulations; prepare additional regulations notice information. Public notice must include: (1) references to statutory authority and statutes being implemented, interpreted, or made specific; (2) informative summary (not text) of regulations; (3) summary of fiscal information; (4) deadline and address for submission of written comments (if an oral hearing is held, the time, date, and place of the hearing); and (5) any information required by the relevant program statute. (See Ch. 4.) Appendices D-1, D-2, and E.
- _____ Request the regulations attorney to open Department of Law file (Appendix G) and agency attorney review of draft regulations and draft public notice. (See Steps 3 and 4 in Ch. 2.)

PUBLICATION AND DISTRIBUTION OF NOTICE

- _____ Published in newspaper of general circulation or trade publication; request return of affidavit of publication from newspaper or trade publication. (See Ch. 4.)
- _____ Furnished to the head of the department in which adopting agency is located (if adopting agency is not a principal department). (See Ch. 4.)
- _____ Furnished to all persons on "interested persons" list and others thought to be interested. (See Ch. 4.)
- _____ Furnished to the regulations attorney in the Department of Law (along with proposed regulations). (See Ch. 4.)
- _____ Electronically transmitted to all incumbent (and newly elected) state legislators; **electronically** furnished to Legislative Affairs Agency (Legislative Legal and Research Services). (See Ch. 4.)
- _____ Electronically furnished, along with the proposed regulations, to the Legislative Affairs Agency, the chairs of the appropriate legislative standing committee(s), the Administrative Regulation Review Committee, and the legislative council (not applicable to Board of Fisheries or Board of Game regulations). (See Ch. 4.) Appendices CC and DD.
- _____ Additional regulations notice information sent with notice to interested persons, legislators, Legislative Affairs Agency (Legislative Legal and Research Services), and regulations attorney. (See Ch. 4.) Appendix E.
- _____ Notice and additional regulations notice information posted on the Alaska Online Public Notice System. (See Ch. 4.)
- _____ Prepare affidavit of notice of proposed regulation adoption. (See Step 5 in Ch. 2.) Appendix H.

PUBLIC COMMENT

- _____ Written comments collected. (See Step 6 in Ch. 2.)
- _____ Oral public hearing, if any, conducted; prepare affidavit of oral hearing. (See Step 6 in Ch. 2.) Appendix I.
- _____ Written comments and any oral comments received before deadline are carefully considered, including comments on costs of compliance to private persons. (See Step 7 in Ch. 2.)
- _____ Use or rejection of written comments is documented (not applicable to boards and commissions). (See Step 7 in Ch. 2.)

LEGISLATIVE AFFAIRS AGENCY REVIEW

- _____ Any written notification or other communication received from Legislative Affairs Agency as a result of its review under AS 24.20.105, and Department of Law advice regarding that notification or other communication, is considered (use executive session if adopting agency is a board or commission). (See Step 7 in Ch. 2.)

ADOPTION OF REGULATIONS

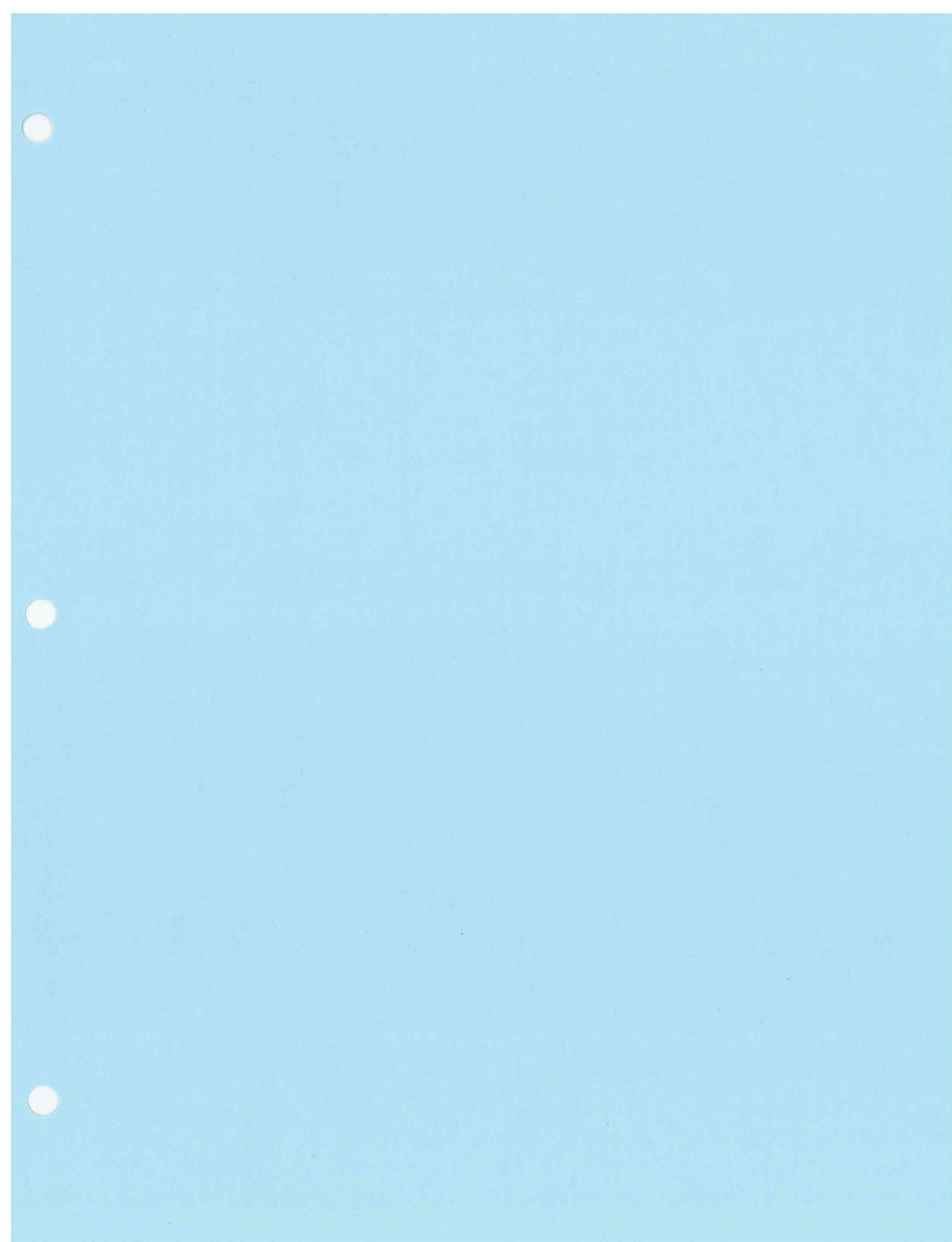
- _____ Final version of regulations is prepared in proper final format (see Ch. 7 and sample regulations in Appendix C).
- _____ Agency formally adopts regulations by signing adoption order or, for a board or commission, voting to adopt during a properly noticed public meeting; certification order prepared, if appropriate. (See Step 7 in Ch. 2.) Appendices J and L. Delegation attached, if required. Appendices O and P. Designation as "acting commissioner" attached, if required. (See Step 7 in Ch. 2.)
- _____ Relevant portion of minutes of board or commission meeting and staff affidavit prepared, if certification order was signed. (See Step 7 in Ch. 2.) Appendices M and N.
- _____ Affidavit of agency record of public comment prepared (Appendix K) (not applicable to boards and commissions). (See Step 7 in Ch. 2.)

TRANSMITTAL TO DEPARTMENT OF LAW

- _____ Completed project is sent to the regulations attorney in the Department of Law. (See Step 8 in Ch. 2.) Transmittal must include:
 - _____ 1. cover memo to the regulations attorney stating the Department of Law file number, any particular issues regarding the project, noting any urgency or requested effective date, and requesting review and approval; Appendix Q;
 - _____ 2. original and one copy of final version of regulations for Department of Law's use;
 - _____ 3. one copy of final version of regulations and public notice for the governor's office use (not applicable to boards and commissions);
 - _____ 4. original signed adoption order or certification order;
 - _____ 5. a copy of any delegation of authority or "acting commissioner" designation;
 - _____ 6. relevant minutes of board or commission meeting and staff affidavit, if a certification order is being submitted;
 - _____ 7. a full-size original or copy of public notice;
 - _____ 8. additional regulations notice information form that was distributed with the public notice;
 - _____ 9. fiscal note, if required;
 - _____ 10. original affidavit of notice of proposed regulation adoption;
 - _____ 11. original publisher's affidavit of publication;
 - _____ 12. original affidavit of oral hearing, if one was held;
 - _____ 13. original affidavit of agency record of public comment (not applicable to boards and commissions);
 - _____ 14. any other relevant documents (such as material adopted by reference).

FILING AND EFFECTIVE DATES

- _____ Date of Department of Law approval of regulations. (See Steps 9 and 10 in Ch. 2.)
- _____ Date regulations filed by the lieutenant governor's office, unless returned under AS 44.62.040(c), if applicable. (See Step 11 in Ch. 2.)
- _____ Effective date of regulations. (See Step 11 in Ch. 2.)
- _____ Summary of text of filed regulations, indicating the effective date, posted on the Alaska Online Public Notice System as soon as possible after filing of the regulations. (See Step 12 in Ch. 2.)



REGULATION CHANGES

Current Regulations Impacted by the proposed change

2 AAC 50.274(b)

2 AAC 50.282

2AAC 50.286

Q: Do current regulations accurately reflect that the Commission can prescribe future methods of disclosure other than in paper form?

A: No.

·Under 2 AAC 50.274(b), the regulation limits the Commission to “forms.” Additional language makes it clear that the 18 months does not refer to a primary election.

·Under 2 AAC 50.282, the regulation limits the Commission to “forms.”

·Under 2 AAC 50.286, the regulation limits the Commission to “forms.”

Recommendation

Because the regulations limit the Commission to using only “forms,” the regulations should be changed so that the Commission is not limiting itself to forms. For each regulation listed above, the Commission should strike the references to “~~on a form~~” and replace that language with “**in the format**.” The additional language under 2 AAC 50.274 harmonizes regulation with AS 15.13.074(c).

2 AAC 50.274. Early campaigning

(a) An individual intending to campaign for office shall file for nomination for the office as required under AS 15.13.100 either by submitting a letter of intent to the commission, or by filing a declaration of candidacy

(1) with the municipal clerk's office for a municipal office, or

(2) with the lieutenant governor's office for a state office.

(b) An individual intending to seek state or municipal office may file a letter of intent, ~~[on a form]~~ **in the format** prescribed by the commission, no earlier than 18 months before the general election when the office is to be filled at a general election or 18 months before the date of the election when the office is to be filled at a special election or municipal election. A letter of intent must state whether the individual will seek state or municipal office, but need not identify the specific seat for which the individual may file. A letter of intent must include a statement certifying that the individual will comply with the requirements of AS 15.13. A letter of intent is

valid until the election identified ~~[on the form]~~ in the format prescribed, unless the individual filing the letter of intent withdraws it before the election.

(c) An individual may not accept a campaign contribution before filing a letter of intent or declaration of candidacy, and may not make a campaign expenditure except for personal travel expenses, opinion surveys, or polls. A person, group, or nongroup entity may not make an expenditure on behalf of an individual who is a prospective candidate before that individual files a letter of intent.

2 AAC 50.282. Candidate registration

A candidate shall register ~~[on a form]~~ in the format prescribed by the commission no later than 15 days after filing a declaration of candidacy for a state office or no later than seven days after filing a declaration of candidacy for a municipal office. A separate registration is required for each elective state or municipal office for which an individual files a declaration of candidacy. A candidate's registration form must list

- (1) the name of the candidate and the candidate's campaign committee;
- (2) the address, telephone number, facsimile number, and electronic mail address of the candidate's campaign committee;
- (3) the name, address, and contact information for the campaign officers, including a chairperson and a treasurer;
- (4) the name and address of each deputy treasurer;
- (5) the name and address of the regulated banking institution that will serve as the campaign account depository; and
- (6) the candidate's certification that the information contained in the registration statement is true, complete, and correct.

2 AAC 50.286. Candidate exemptions

(a) A candidate for municipal office who does not intend to receive contributions exceeding \$5,000, or make expenditures exceeding \$5,000, may file an exemption statement ~~[on a form]~~ in a format prescribed by the commission instead of the candidate registration form required under 2 AAC 50.282. A candidate who files the exemption statement form is not required to file a campaign disclosure report required under AS 15.13.110 and 2 AAC 50.321, but shall comply with all other requirements of AS 15.13, including

- (1) limitations on who may contribute;
- (2) amount and timing of contributions; and

(3) use of campaign money.

(b) If a candidate who has filed an exemption statement accepts more than \$5,000 in contributions or spends more than \$5,000 to influence the outcome of the election, the candidate loses the reporting exemption under this section. A candidate whose exemption is lost shall immediately register as a candidate and shall file each campaign disclosure report due after the change in status. The candidate's first campaign disclosure report must include each contribution and expenditure from the beginning of the campaign through the end of that reporting period.

Impact

Changing the language in the regulations removes the need for future changes in the regulation(s) in reaction to legislation and provides long term stability to the regulations.

Legal Issues

The proposed regulation cannot be interpreted in a way that would override a statute; in this case AS 15.13.040, (ch 1 SLA 2012) "on a form" and "in a format".

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.274(c)

Q: Should the Commission clarify the language to allow draft groups to make expenditures before a prospective candidate files a letter of intent?

A: Yes. Under 2 AAC 50.405(3) a "draft group" is a group that forms for the purpose of drafting one or more individuals to become a candidate. To fulfill their purpose, they must be permitted to spend money in support of a potential candidate before that person has demonstrated intent to be a candidate.

Recommendation

(c) An individual may not accept a campaign contribution before filing a letter of intent or declaration of candidacy, and may not make a campaign expenditure except for personal travel expenses, opinion surveys, or polls. **Except as provided in 2 AAC 50.290(b),** [A]a person, group, or nongroup entity may not make an expenditure on behalf of an individual who is a prospective candidate before that individual files a letter of intent.

Impact

The addition of the clarification allows draft groups to serve their purpose and reduces confusion amongst the members of the public who wish to participate in the electoral process by seeking a candidate for office using the draft method.

Legal Issues

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.290(a)

Q: Should the Commission clarify the language to require all ongoing groups to register each year not subject to a minimum level of activity?

A: Yes. A year-end report is required by statute AS 15.13.110(a) for an ongoing group even if the group does not participate in election activity. Registration triggers an expectation report for that group under the Insight program.

Recommendation

2 AAC 50.290. Groups; draft groups; controlled groups; ballot groups

(a) If a group, including a political party, ~~[an ongoing group,]~~ and an initiative committee, raises, solicits, collects, contributes, disburses, or incurs indebtedness of \$500 or more in money or anything of value in the aggregate during a calendar year, or directs, coordinates, or controls that activity, that group shall first register with the commission as provided in AS 15.13.050, and shall file reports as provided in AS 15.13.040 (b) and (c) and 2 AAC 50.321. An ongoing group must register each year. To register, a group must disclose, on a form prescribed by the commission,

- (1) the group's name, address, and purpose;
- (2) the name and address of a chair and a treasurer; the same person may serve as both chair and treasurer;
- (3) any election in which the group intends to be active during the year;
- (4) the type of group;
- (5) the name and location of the group's campaign depository if one is required under 2 AAC 50.298; and
- (6) the treasurer's certification that the information contained in the registration statement is true, complete, and correct.

Impact

The changes clarify the requirement that ongoing groups must register each year.

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.302

Q: Should this section be renamed for clarity?

A: Yes. There is confusion about what types of campaign subcommittees this regulation applies to: candidate, political party, etc.

Recommendation

Add the word "Candidate" to the heading to help make clear that these types of groups are different from a political party subgroup known as a "subordinate unit" and that a Candidate Campaign Subcommittee is controlled by the candidate.

2 AAC 50.302. Candidate Campaign subcommittee

A candidate's campaign committee, or a controlled group as provided in 2 AAC 50.290(c), may create a subcommittee. A subcommittee is not a separate group and may not maintain separate bank accounts and records or file separate reports. The name of a subcommittee must include the name of the candidate or controlled group. The name of the subcommittee may not be used when identifying political advertising as required under AS 15.13.090 and 2 AAC 50.306.

Impact

The title addition simply clarifies the type of subcommittee and reduces confusion among groups.

Legal Issues

None.

REGULATION CHANGE

Current Regulation Impacted by the proposed change

2 AAC 50.321(a)(2)

Q: Should descriptions be required for all non-monetary contributions?

A: Yes. A description of the non-monetary contribution should be required regardless of price, the same way a description is required for all expenditures greater than \$50.

Recommendation

(2) for any nonmonetary contribution with a value greater than \$50 a description of the contribution and the estimated fair market value;

Q: How is an expenditure incurred but not paid reported on a campaign report.

A: Under Debt Section of the report.

Recommendation

Add debt section language as new subsection

2 AAC 50.321. Reporting by a candidate, group, or nongroup entity

(a) A candidate shall file each report required under AS 15.13.110 containing the information required under AS 15.13.040 (a) and the following information:

(1) for any monetary contribution, the check number or the identifying transaction number if paid by other means;

(2) for any nonmonetary contribution with a value greater than [~~\$100~~]**\$50**, a description of the contribution and the estimated fair market value;

(3) for each loan or loan guarantee,

(A) the date received;

(B) the name and address of the lender and any loan guarantor or cosigner;

(C) the principal occupation and employer of the lender, loan guarantor, or cosigner;

(D) the interest rate; and

(E) the principal amount of the loan;

(4) for each contribution from the candidate to the campaign, and for income earned from contributions, including bank interest and income from unused contributions invested in compliance with 2 AAC 50.348.

(A) the date received;

(B) a description of the income;

(C) the name and address of the source of the income; and

(D) the amount or estimated value of the contribution or income;

(5) for each paid expenditure,

(A) the date of payment;

(B) the check number or the identifying transaction number if paid by other means;

(C) the name and address of the payee;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure; and

(6) for each expenditure incurred but not paid,

(A) the date the expenditure was incurred;

(B) the name and address of the person with whom the debt was incurred;

(C) the purpose of the incurred expenditure; ~~and~~

(D) the amount of the incurred expenditure ~~[-]; and~~

(E) be reported under the debt section of the report.

(b) A group shall file each report required by AS 15.13.110 containing the information required in AS 15.13.040 (b) and (c) and the following information:

(1) for income earned from contributions, including bank interest and income from unused contributions invested in compliance with 2 AAC 50.348, the information required in (a)(4)(A) - (D) of this section; and

(2) for each expenditure, the information required in (a)(5) and (6) of this section.

(c) A nongroup entity shall file each report required by AS 15.13.110 containing the information required in AS 15.13.040 (j), the treasurer's certification required under AS 15.13.040 (c) and the information required under (b)(1) and (2) of this section.

(d) If an expenditure required to be reported under (a) or (b) or this section is made to an advertising agency or to an individual or business that provides campaign consultation or management services, the report must disclose in detail all services rendered, including the name of each business from which campaign goods or services were purchased or subcontracted or media advertising placed, and the amount of the expenditure.

(e) For any contribution, the date received is the day on which the contribution is first in the possession of a candidate, or in the possession of a treasurer or deputy treasurer of a candidate, group, or nongroup entity;

(f) A candidate, group, or nongroup entity that does not receive any contribution and does not make any expenditure in a reporting period may file a zero report for that period by filing the cover page of the campaign disclosure report with the "no activity" box checked.

Impact

Requires a description for all expenses and non-monetary contributions. Increases consistency of requirements.

Legal Issues

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.329

Q: Should the Commission continue to require cumulative contributor totals for payroll deduction and automatic payment plans and other information not required by the statute?

A: No. Currently myAlaska and the new APOC online filing system "Insight" does not ask for or require cumulative reporting for contributors. Our programmers have said that this would be a very expensive thing to put in place and very difficult to implement because the names of contributors are not always spelled the same or entered the same. The variations are too numerous to list and catch. However, because the program allows search capabilities, it is much easier to view how many contributions have been given by an individual, making the cumulative amount provisions less necessary.

AS 15.13.040(b) requires the name, address, principal occupation and employer of a contributor only when that contributor contributes in excess of \$100 in the aggregate a year. The legislature drew a clear distinction between the reporting requirement of groups and candidates to the extent that AS 15.13.040(a) requires the name and address of all contributors to candidates and the contributor's occupation and employer only when the contributor to a candidate contributes in excess of \$50.

Subsection (5) requires reporting by the date of the deduction from the employee's pay. But, the typical PAC does not receive that information until a month after the deduction is made. In many instances a deduction in a reporting period will not be known until after the reporting period is over and the report was due. The requirement would force the PAC to either amend the report each time, or report the deduction in the next report (out of the reporting period). All other groups report contributions as of the date received. In the case of PAC's receiving payroll deductions, they do not receive the deducted amount until a month after the deduction was made.

Recommendation: Remove the cumulative language and the language that requires more than required by the statute:

To the extent required by AS 15.13.040(b), a group or nongroup entity shall report each contribution from each contributor in an ongoing payroll deduction program or other automatic payment plan in each reporting period for each contributor by providing the

(1) name and address of the contributor;

(2) ~~[-cumulative amount received from that contributor in the reporting period;]~~ **Repealed.**

(3) ~~[-cumulative amount received from that contributor in the calendar year;]~~ **Repealed.**

- (4) principal occupation and employer of the contributor, unless the cumulative amount received from that contributor in a calendar year is \$100 or less; and
- (5) ~~[amount and frequency of each deduction or payment.]~~ **Repealed.**

Impact

The change removes difficult to enforce language that is relatively unneeded because of the new electronic system which allows for searching by individuals.

Legal Issues

None.

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.384(c)

Q: Should the Commission require groups to disburse funds in the same manner as candidates?

A: No. Groups are a bit more complex and do not link to just one election. Most groups are active in multiple elections spanning multiple years (except for ballot groups). A group may one day decide to be active in one election at the end of a year and then later on in that year before the election decide not to participate. If a group does not remain active in one year does not mean they will not be active the next year. They should not be required to close out their accounts by February 1st. The requirement should be once they zero out their account to file a Final report within 15 days, like it was before the new regulations went into place.

Recommendation: Delete regulation language referring to group disbursal of funds.

2 AAC 50.384. Winding up campaign affairs

(a) After an election, a candidate shall disburse unused campaign contributions and other property as provided in AS 15.13.116 no later than February 1 following each state primary or general election, or 90 days after a municipal election, a municipal runoff election, or, except as provided in (d) of this section, a special election. A candidate shall report the disbursement of unused campaign contributions and other property no later than 15 days after the disbursement, but no later than February 15 for each state primary or general election, and no later than 105 days after a municipal election, a municipal runoff election, or, except as provided in (d) of this section, a special election. A candidate who transfers unused campaign contributions to a future campaign account under AS 15.13.116 (a)(7) and uses them in compliance with 2 AAC 50.348(c) and (d), or who transfers unused campaign contributions to a public office expense term account under AS 15.13.116 (a)(8), shall continue to file applicable reports. A candidate who is unable to close a campaign account or pay all campaign debts by the deadlines in this section shall continue to file applicable reports. Any unpaid campaign debt remains the responsibility of the campaign, and does not become a personal debt of the candidate.

(b) After an election, a group or nongroup entity may

(1) leave its money in a campaign account until the following election if the group plans to remain active; a group remaining active must re-register annually and must file a year-end report by February 15 as provided in AS 15.13.110 (a)(4); or

(2) disburse the campaign account money by

(A) contributing to another candidate or group subject to the contribution limitations and other requirements of AS 15.13;

(B) donating the money to a qualified charitable organization under 26 U.S.C. 501(c)(3);

(C) repaying its contributors; or

(D) paying for a victory or thank you party.

(c) ~~[A group or nongroup entity that does not plan to remain active shall disburse its money as provided in (b)(2) of this section no later than February 1 following each state primary or general election, or 90 days after a municipal election, a municipal runoff election, or, except as provided in (d) of this section, a special election.]~~ A group or nongroup entity that does not plan to remain active shall report the disbursement of all campaign money no later than 15 days after the disbursement~~], but no later than February 15 for each state primary or general election, and no later than 105 days after a municipal election, a municipal runoff election, or, except as provided in (d) of this section, a special election].~~

(d) In this section, the time limits for disbursement and reporting after a primary or general election apply to a special election that is called to be held with, and at the time of, a general election or primary election.

Impact

The change removes time specific language for groups seeking to become inactive and disburse funds.

50.290 contains a \$500 threshold of contributions or expenditures before the registration requirement is triggered. The ongoing group should be required to re-register every year whether or not they meet the 50.290 threshold.

We should also amend 50.290 to remove the term “ongoing group” so that the \$500 threshold does not apply to them.

Legal Issues

None.

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.816(c)

Q: Must a report filed under AS 15.13.040(p) be separately certified under AS 15.13.040(a)(2).

A: Yes.

Recommendation: Recommend addition to regulation to clarify the requirements for filing under statute.

2 AAC 50.816. Electronic filing

(c) Except for a person required to file electronically under AS 24.45, a person may seek an exemption from the electronic filing requirement by filing a request in compliance with the exemption procedure set out in 2 AAC 50.821. In addition to meeting the requirements of 2 AAC 50.821(a), a person requesting an exemption from the electronic filing requirement must

(1) attach the statement or form that the person seeks to file by means other than electronic filing to the exemption request; and

(2) submit both the exemption request and the statement or report to which it applies by mail, facsimile transmission, or hand delivery no later than the date on which the statement or report is due.

(d) A filing submitted to the commission by electronic mail is delivered when the sender's electronic mail account confirms the electronic mail was sent to the commission. A report or registration required under AS 24.45 is delivered when

(1) electronically signed;

(2) verified by the electronic signature verification system designated by the commissioner of administration and established in 2 AAC 05.200 - 2 AAC 05.295; and

(3) recorded as submitted in the online account of the person required to register or report.

(e) In this section "electronic signature" has the meaning given in AS 09.80.190.

(f) A report submitted in accordance with AS 15.13.040(p) must comply with provisions of AS 15.13.040(a)(2).

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.821(a)

Q: Are the due dates consistent between regulations for exemption requests? Is a form required to file a request for exemption or waiver.

A: No. Due date of exemption requests need to be consistent - 2 AAC 50.816 requires "no later than the date on which the Statement or report is due" while 2 AAC 50.821 requires exemption request "before the due date". No. An applicable form has not been prescribed by the commission.

Recommendation: Recommend change to require only that the request be in writing and be submitted on or before the due date.

2 AAC 50.821. Request for exemption or waiver

(a) To request an exemption allowed under AS 15.13, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50, or a waiver of any requirement of this chapter, a person shall file a written request for exemption or waiver [~~on the applicable form prescribed by the commission~~]. A written request for exemption or waiver must be submitted on or before the due date of any report or filing to which it relates, and must provide the following information:

- (1) the name of the person requesting the exemption or waiver;
- (2) the person's mailing address;
- (3) the electronic mail address or telephone number at which the person may readily be contacted;
- (4) the matter for which the person seeks an exemption or waiver;
- (5) if the exemption or waiver request relates to information for which this chapter provides an exemption, the applicable provision of this chapter;
- (6) a statement whether the requested exemption or waiver is for a single report or filing, or for additional future reports requiring similar information;
- (7) the reasons for the exemption request;
- (8) any other information essential to the particular exemption or waiver request; and

(9) a certification by the person requesting the exemption or waiver that all facts stated in the request are true.

Impact

Consistency and allowing for flexibility in requests for waiver or exemption.

Legal Issues

REGULATION CHANGE PROPOSAL

Current Regulations Impacted by the proposed change

2 AAC 50.845

2 AAC 50.855

Q: Are the daily penalty calculations consistent for civil penalties throughout the regulations?

A: No. The penalty daily calculation changed in .855 creating a one day bonus window--this is not consistent with .845 however. Removing the word before reverts to previous penalty assessment calculations and places consistency back in the regulation

Recommendation

Revert to original time calculation:

2 AAC 50.855. Penalty assessment procedure

(a) If, no later than 30 days after the due date, a person responsible for filing a registration, statement, or report required under AS 15.13, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50 that is late or incomplete corrects the deficiency, the commission staff shall assess a penalty. The amount of the penalty must be determined by multiplying the applicable daily maximum penalty set out in AS 15.13.390, AS 24.45.141, AS 24.60.240, or AS 39.50.135 by the number of days the registration, statement, or report was late or incomplete. The number of late or incomplete days includes each day following the due date of the registration, statement, or report through the day [before] a registration, statement, or report that substantially complies with the filing requirement is mailed or delivered to the commission.

(b) Notwithstanding (a) of this section, the staff shall

(1) waive an assessed penalty if a deficiency is insignificant and is promptly corrected

(A) without receiving a notice from the staff; or

(B) within the time allowed by any notice of deficiency from the staff; or

(2) reduce an assessed penalty by 50 percent if

(A) the amount of the penalty is less than \$100;

(B) the person against whom the penalty is assessed shows by means of an affidavit that one or more mitigating factors set out in 2 AAC 50.865(b)(1) - (5) would justify reducing the penalty; and

(C) staff has received no evidence of an aggravating factor under 2 AAC 50.865(d) .

(c) When the staff assesses a penalty in compliance with (a) of this section, the staff shall, no later than 14 working days after receiving the materials that correct the deficiency, mail or deliver a written penalty assessment to the person responsible for filing the registration, statement, or report. The written penalty assessment must show the calculation of the penalty, and must state that the person responsible may appeal the penalty assessment as provided in 2 AAC 50.831 and 2 AAC 50.860.

(d) If the commission does not receive a required registration, statement, or report, or material information needed to complete a registration, statement, or report, or receives it later than 30 days after the due date, the staff shall assess a penalty as set out in this section. The written penalty assessment must also inform the person responsible for the registration, statement, or report that the amount of the penalty will continue to increase each day until the registration, statement, or report, and all material information required in the registration, statement, or report, is mailed or delivered to the commission. The staff shall also inform the person responsible for the registration, statement, or report that the staff will initiate action to enforce the remedies described in the applicable provisions of 2 AAC 50.850.

Impact

Consistency. This appears to have been an inadvertent change.

Legal Issues

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.870

Q: Is there a mechanism for withdrawal of complaints before an investigation report is provided if agreed to by all the parties and the complainant?

A: No. This change of regulation would establish a process for a withdrawal of a complaint without formal action by the commission when there is general agreement by Staff, Respondent and Complainant that withdrawal is appropriate .

Recommendation: Recommend adoption of additional language in this section to establish a withdrawal process when no need for staff report and hearing is recognized by the Staff, Respondent and the Complainant.

2 AAC 50.870. Complaints

(a) A person, including a member of the commission or the staff, may file a complaint alleging a violation of AS 15.13, AS 24.45, AS 24.60.200 - 24.60 260, AS 39.50, or this chapter.

(b) A complaint under this section must be in writing, and must be signed, under oath and upon penalty of perjury, before a notary public, municipal clerk, court clerk, postmaster, or other person authorized to administer oaths. The complaint may be on a form provided by the commission or in any other form that provides the following information:

(1) the full name, mailing address, and telephone number of the complainant;

(2) the name of the person alleged to be in violation;

(3) the statute or regulation alleged to be violated;

(4) a clear and concise description of facts that, if true, would violate a provision of AS 15.13, AS 24.45, AS 24.60.200 - 24.60 260, AS 39.50, or this chapter;

(5) the basis of the complainant's knowledge of the facts alleged, including those based on personal knowledge and those based upon other sources of information and belief;

(6) relevant documentation or other evidence that is available to the complainant; and

(7) proof that a copy of the complaint and documentation was mailed or delivered to the person alleged to be in violation.

(c) No later than one day after receiving a complaint, the staff shall determine if the complaint

(1) is signed and notarized under oath;

(2) contains the information required in (b) of this section;

(3) alleges facts that, if true, would be a violation of AS 15.13, AS 24.45, AS 24.60.200 - 24.60 260, AS 39.50, or this chapter; and

(4) alleges a violation that occurred within the last five years.

(d) If the staff determines that the complaint does not meet all the criteria of (c) of this section, the staff shall, no later than one day after receiving the complaint, reject the complaint, and notify the complainant, the person alleged to be in violation, and the commission of the rejection and the reason. A person that filed a complaint rejected by the staff may file a written request asking the commission to review the rejection. The commission will review the complaint and the reasons for the staff's rejection of the complaint at the next regularly scheduled commission meeting unless, in its discretion, the commission schedules the matter for a special meeting. The commission will

(1) affirm the staff's rejection of the complaint; or

(2) find that the complaint meets the criteria in (c) of this section, and either set a hearing for expedited consideration or direct the staff to conduct an investigation.

(e) If the staff determines that the complaint meets all the criteria of (c) of this section, the staff shall, no later than seven days after receiving the complaint, notify the complainant, the person alleged to be in violation, and the commission. The notice must include the statement that the person alleged to be in violation may file a written answer no later than 15 days after the date of the notice. The staff shall investigate the complaint as set out in 2 AAC 50.875.

(f) After accepting a complaint and before issuance of an investigation report under 2 AAC 50.875, the complainant may withdraw the complaint if the executive director and the respondent agree in writing to the withdrawal of the complaint. The executive director shall then notify the commission the complaint has been withdrawn by agreement. No further action on the withdrawn complaint will be taken except upon subsequent order of the commission.

Impact

Removal from commission direct consideration a withdrawn complaint without commission action.

Legal Issues

REGULATION CHANGE PROPOSAL

Current Regulations Impacted by the proposed change

2 AAC 50.875

2 AAC 50.880

Q: Are the timeline calculations consistent for complaint process throughout the regulations?

A: No. The current wording creates conflicting timelines for responses to investigation reports between the two regulations. As written the response to complaint becomes confused with the response to an investigation report. Section 880 is about answers to complaints only. Information about responding to investigation reports is provided in 2 AAC 50.875.

Recommendation: Adopt deletions to 2 AAC 50.880 to restore consistency of the regulations.

2 AAC 50.880. Answer to complaint

~~[(a) A person alleged to be in violation may file an answer to the complaint at any time during the 15 days after receiving~~

~~(1) notice that the complaint satisfies the requirements in 2 AAC 50.870(a); or~~

~~(2) an investigation report issued as provided in 2 AAC 50.875.]~~

(a) A person alleged to be in violation may file an answer to the complaint within 15 days after receiving notice that the complaint satisfies the requirements in 2 AAC 50.870(a); or within 10 days after receiving an investigation report under 2 AAC 50.875.

(b) An answer to a complaint ~~[or investigation report]~~ must

(1) admit or deny the allegations in the complaint;

(2) be signed by the respondent, under oath and upon penalty of perjury, before a notary public, municipal clerk, court clerk, postmaster, or other person authorized to administer oaths;

(3) include the mailing address and telephone number of the respondent; and

(4) be accompanied by proof that a copy of the answer and supporting documentation was mailed or delivered to the complainant.

(c) An answer to a complaint ~~[or investigation report]~~ may

- (1) respond to the allegations in the complaint;
- (2) state any defense to the allegations;
- (3) object to the complaint as so indefinite or uncertain that the respondent cannot prepare a defense; and
- (4) include relevant documentation.

Impact

Consistency. It appears to have been an inadvertent change which has now created conflict between the two regulations. The investigation report issues are left to 2 AAC 50.875.

Legal Issues

None. Response times for investigation reports are in a different section.

REGULATION CHANGE PROPOSAL

Current Regulation Impacted by the proposed change

2 AAC 50.990(13)(b)

There is a typographical error citing to the wrong statute, i.e., not the one for lobbying.

Recommendation: Fix the typo.

2 AAC 50.990. Definitions

In this chapter, unless the context requires otherwise: ...

(13) "gift"

(A) means a payment or item received without consideration of equal or greater value;

(B) for a person subject to AS 2[5]4.45, has the meaning given in AS 24.45.171 ;

(C) includes

(i) satisfaction of a loan or debt by forgiveness or payment by a third party, or a third party's enforceable promise to pay the loan or satisfy the debt obligation if the person obligated does not give full and adequate consideration;

(ii) accommodations, including housing, a hotel room, and a vacation rental;

(iii) a ticket for travel or an entertainment event;

(iv) food or beverages not intended for immediate consumption;

(v) a discount or rebate for goods and services if the discount or rebate is not available to the public generally;

(vi) goods or services provided or loaned for personal or professional use, including office expenses connected with holding public office;

(vii) a scholarship to pay costs of an educational or recreational program;

(D) does not include

(i) a political contribution;

(ii) a commercially reasonable loan made in the ordinary course of business in exchange for consideration of equal or greater value;

(iii) an inheritance;

(iv) an item of value received without consideration from a family member or a parent, nondependent child, sibling, grandparent, aunt, uncle, niece, or nephew;

Impact

Accurately cites to the actual lobbying statute.

Legal Issues

None.

NEW REGULATION REQUESTED

Q: Should the Commission clarify that municipalities are never exempt from municipal expenditure laws?

A: Yes. Municipalities are confused about the requirement to adhere to AS 15.13 when the municipality has opted out of AS 15.13 for its public officials. They believe the opt-out provision applies to the political subdivision as well as the individuals. The entity is always governed by AS 15.13.145.

Recommendation

New regulation, since there are no current regulations related to AS 15.13.145 or explaining AS 15.13.010(a)(2):

The opt out provisions of AS 15.13.010(a)(2) and AS 39.50.145 do not modify the mandatory requirements of AS 15.13.145. All municipalities and subdivisions of the State of Alaska must adhere to AS 15.13.145 regardless of whether a municipality or subdivision has opted out of disclosure requirements for candidates, public officials, and persons participating in elections.

Impact

A new regulation greatly clarifies the extent of the opt-out provision and ensures that political subdivisions of the state follow AS 15.13.145

Legal Issues

NEW REGULATION REQUESTED

Q: Should the Commission expressly require filers to amend previous reports for accuracy at all times?

A: Yes. The lack of overt requirement to amend is causing concerns for some filers. Candidate reports are the public record of a campaign and must show an accurate picture of the campaign at all points in time. Therefore, candidates must amend previous reports for continuity and public disclosure.

Recommendation

New regulation, since there are no current regulations specifying that reports must be accurate at all times, not just when filed:

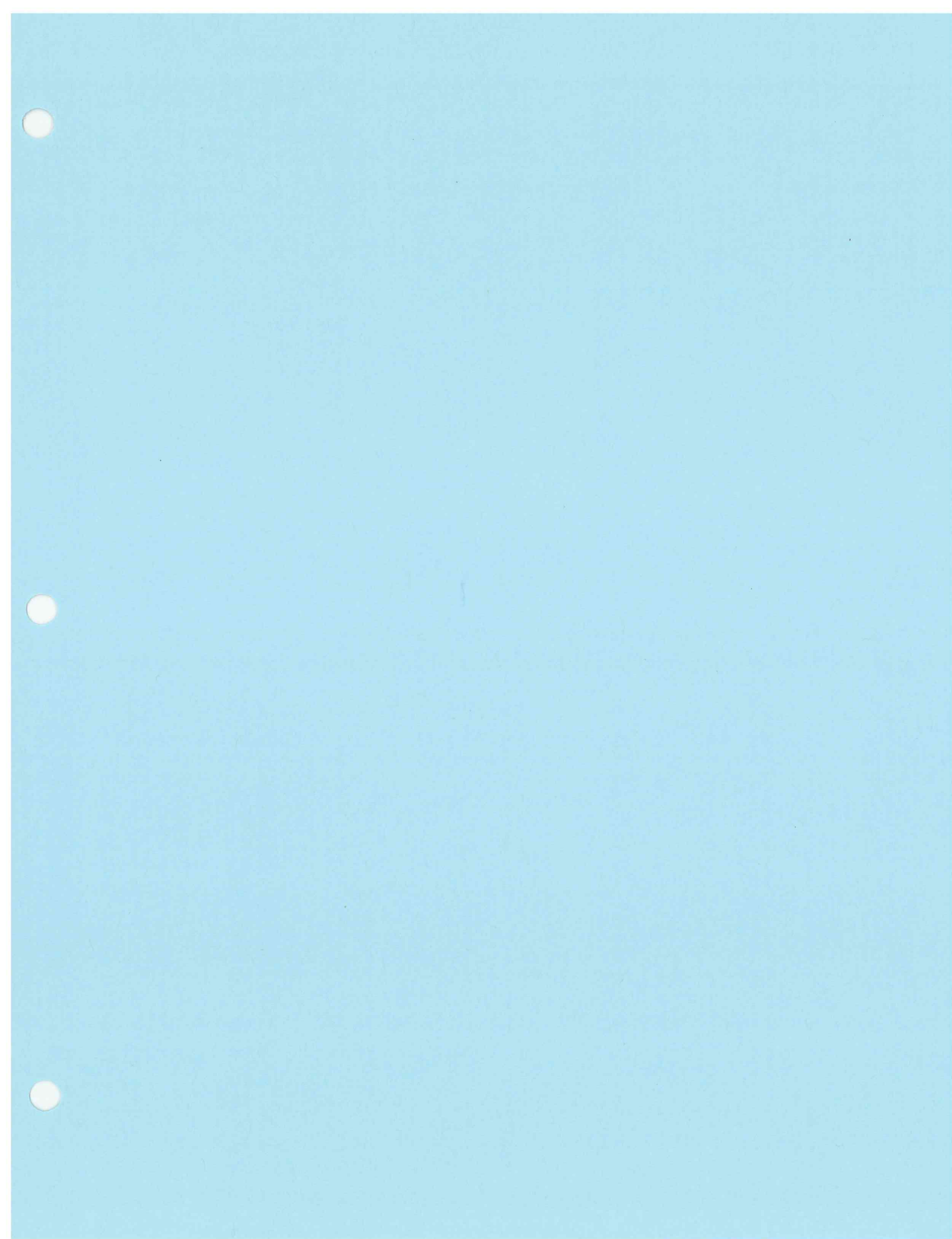
As campaign reports are the record of a campaign's financial history for the public, filers shall amend all previous reports if the information provided therein is incorrect or subsequently becomes incorrect, even if the information was accurate at the time of initial filing. For any change in value to any transaction greater than or equal to \$100, the treasurer shall update the campaign finance report within 10 days, or if within 9 days of an election, within 24 hours.

Impact

The language will codify that if information changes or becomes available at a later date, previous reports must be amended to show these changes.

Legal Issues

This regulation refers only to incorrect information and not incomplete information or reports.



NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALASKA PUBLIC OFFICES COMMISSION

The Alaska Public Offices Commission proposes to adopt regulation changes in Title 50 of the Alaska Administrative Code, dealing with Campaign Disclosure 2 AAC 50.250 to 2 AAC 50.405, Alaska Public Office Commission Procedures 2 AAC 50.801 to 2 AAC 50.895 and General Provisions 2 AAC 50.900 to 2 AAC 50.995, including the following:

2 AAC 50.274(b) is amended to clarify the language that limits when a letter of intent may be filed. The intent is to harmonize the regulation with language in AS 15.13.074(c) and to make it clear that the 18 month period in the current regulation language does not refer to 18 months before a primary election.

2 AAC 50.274(b), 2 AAC 50.282 and 2 AAC 50.286 are amended by replacing “on a form” language with “in the format” to properly reflect the current electronic filing system which does not utilize a form.

2 AAC 50.274(c) is amended to recognize the exception for a candidate draft group to the general rule that expenditures may not be made on behalf of an individual before that individual files a letter of intent.

2 AAC 50.290(c) is amended to clarify the registration requirement for an ongoing group.

2 AAC 50.302 is amended to add the word “candidate” to the title line of the regulation to make clear that this regulation does not refer to a political party subgroup commonly known as a subordinate unit.

2 AAC 50.321 is amended to lower the amount triggering the reporting of the description and the estimated fair market value of a nonmonetary contribution and to clarify reporting of a campaign expenditure that is incurred, but not paid.

2 AAC 50.329 is amended to change the requirement that a group or a nongroup entity report cumulative contribution amounts for each contributor on campaign reports and other payroll deduction information.

2 AAC 50.384(c) is amended to remove surplus language and to only specify a time period for disbursement of the campaign money of a group.

2 AAC 50.816 is amended by adding a subsection on certification of a report under AS 15.13.040(p).

2 AAC 50.821(a) is amended to remove language requiring a request for exemption or waiver be submitted on a specified form. The proposed change also harmonizes this regulation with 2 AAC 50.816 and extends the due date for an exemption or waiver request filing by one day.

2 AAC 50.855 is amended to remove the word “before” in the regulation to effectively add a day when calculating the civil penalty assessment on a late filed registration, statement or report. This amendment also harmonizes this regulation with 2 AAC 50.845.

2 AAC 50.870 is amended by adding a new subsection to allow for withdrawal of a complaint when resolved by the parties and the complainant without consideration by commission members.

2 AAC 50.880 is amended by deletion and substitution of language in 2 AAC 50.880(a) to harmonize with 2 AAC 50.875 the time period for an answer to a complaint.

2 AAC 50.990(13)(B) is amended by correct a typographical error in the “gift” definition. The citation is to statute chapter AS 25.45. The correct statute chapter citation is AS 24.45.

The Alaska Public Offices Commission proposes to adopt new regulations in Title 50 of the Alaska Administrative Code, dealing with Campaign Disclosure 2 AAC 50.250 to 2 AAC 50.405, Alaska Public Office Commission Procedures 2 AAC 50.801 to 2 AAC 50.895 and General Provisions 2 AAC 50.900 to 2 AAC 50.995, including the following:

The proposed regulation will explain that the provisions of AS 15.13.145 are not modified by the disclosure opt out process under AS 15.13.010(a)(2) and AS 39.50.145.

The proposed regulation will impose a requirement for a person to amend a campaign finance report when information is incorrect or subsequently becomes incorrect.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments Jerry D. Anderson, Assistant Director, Alaska Public Office Commission, 2221 E. Northern Lights Blvd, Suite 128, Anchorage, AK 99508-4149. Additionally, the Alaska Public Offices Commission will accept comments by facsimile at (907) 276-7018 and by electronic mail at jerry.anderson@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. The comments must be received no later than 4:00 p.m. on May 1, 2014.

Oral or written comments also may be submitted at a hearing to be held on June 4, 2014, in Suite 128, 2221 East Northern Lights Blvd. Anchorage, AK. The hearing will be held from 1:00 p.m. to 2:00 p.m. and might be extended to accommodate those present before 1:30 p.m. who did not have an opportunity to comment.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Maria Bulfa, APOC Staff at (907) 276-4176 no later than to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Jerry D. Anderson at (907) 276-4176 or jerry.anderson@alaska.gov, or go to doa.alaska.gov/apoc/.

After the public comment period ends, the Alaska Public Offices Commission will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 15.13.030(9)

Statutes Being Implemented, Interpreted, or Made Specific: AS 15.13; AS 24.45; AS 24.60.200 to 24.60.260 and .990; AS 39.50

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: _____

[official's signature]
Paul Dauphinais, Executive Director